

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON

FEBRUARY SESSION, 1995

FILED

September 30, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,)
)
 APPELLANT)
)
 VS.)
)
 ROBERT M. RUSSELL,)
)
 APPELLEE)

NO. 02C01-9403-CC-00044

HENDERSON COUNTY

HON. WHIT LAFON,
JUDGE

(Motion to Suppress)

FOR THE APPELLANT:

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OPINION FILED: _____

AFFIRMED

JERRY SCOTT, SPECIAL JUDGE

OPINION

This is an appeal by the State from a judgment granting a motion to suppress the evidence seized pursuant to a search warrant.

On May 24, 1993, Stuart Mills obtained a search warrant for the home of Mike Russell citing as the reason for having probable cause to believe that Mr. Russell was in possession of “controlled substances” that the Affiant (Mr. Mills):

has received the following information from Chief Roger Loftin of the Lexington Police Dept. Chief Loftin received information from a citizen informant who stated they had been on the premises within the past 72 hours and had seen controlled substances on the premises.

Pursuant to the search warrant a search was conducted and marijuana and drug paraphernalia were found. The defendant’s motion to suppress was granted at an abbreviated hearing at which the trial judge noted from his reading of the search warrant that “the motion is good,” because “this guy didn’t do the informing for the man who got the search warrant,” because “the arresting officer (actually the affiant for the warrant) got his information from the dispatcher who got it from somebody else.”

The State relies on *State v. Melson*, 638 S.W.2d 342, 354-56 (Tenn. 1982) for the proposition that a citizen informant is presumed reliable and the prosecution is not required to establish the credibility of the informant or the reliability of his information. However, the Supreme Court notes that the citizen informant’s information must be judged by the “reliability of source” and the information must be judged by “all of the circumstances and the entirety of the affidavit.” *Id.*

The defendant agrees with the State’s analysis of *Melson*, but points to the fact that the basis for the relief of the citizen informant from the stringent requirements for other informants set forth in *State v. Jacumin*, 778 S.W.2d 430, 436 (Tenn. 1989) is the personal acquaintance -- at least from a direct contact -- by the affiant with the

informant. In *State v. Moon*, 841 S.W.2d 336, 339 (Tenn. Cr. App. 1992), this Court recognized the necessity of showing the informant’s credibility or that the information given by the informant was “otherwise reliable.”

Later, in *State v. Cauley*, 863 S.W.2d 411, 417 (Tenn. 1993), the Court, citing *Melson*, noted that information provided by a “citizen/bystander witness” “known to the affiant” is presumed to be reliable, and the prosecution is not required to establish either the “credibility of the informant or the reliability of his information.” Of course, the affidavit must set forth on its face facts sufficient to establish probable cause. *State v. Moon*, 841 S.W.2d at 338.

In this case there is nothing in the affidavit to establish that the affiant even knew who the citizen informant was. Therefore, his informant could not under the rationale of *Cauley* be considered a citizen informant.

The trial judge properly suppressed the fruits of the search and the judgment is affirmed.

JERRY SCOTT, SPECIAL JUDGE

CONCUR:

JOSEPH M. TIPTON, JUDGE

DAVID H. WELLES, JUDGE